IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.123 OF 2006,

Konkan Railway Corporation Ltd. ...Appellant

Vs.

Sanjay Shamrao Adkar and another ...Respondents

WITH
FIRST APPEAL NO.124 OF 2006

Konkan Railway Corporation Ltd. ...Appellant

Vs.

Vidyadhar P. More and another ...Respondents

WITH
FIRST APPEAL NO.125 OF 2006

Konkan Railway Corporation Ltd. ...Appellant

Vs.

Rajan Rajadhyaksha and another ...Respondents

WITH
FIRST APPEAL NO.126 OF 2006

Konkan Railway Corporation Ltd. ...Appellant

Vs.

Nalini Bhavji @ Bhikaji Nagvekar & Anr. ...Respondents

WITH
FIRST APPEAL NO.127 OF 2006

Konkan Railway Corporation Ltd. ...Appellant

Vs.

Bhikaji V.Pawar and another ...Respondents

WITH
FIRST APPEAL NO.128 OF 2006

Konkan Railway Corporation Ltd. ...Appellant

Vs.

Arvind Shivram Sandye and another ...Respondents

WITH
FIRST APPEAL NO.134 OF 2006

Konkan Railway Corporation Ltd. ...Appellant

Vs.

Manohar Shankar Parkar and another ...Respondents

WITH
FIRST APPEAL NO.137 OF 2006

Konkan Railway Corporation Ltd. ...Appellant

Vs.

G.S.Khedekar and another ...Respondents

FIRST APPEAL NO.138 OF 2006

Konkan Railway Corporation Ltd. ...Appellant

Vs.

Devendra D.Bhongale and another ...Respondents

Ms Asha Bhambhani i/ Ms Lalita Panchakshari and Ms Kirti Kokil for the Appellant

Mr.Y.M.Nakhawa,A.G.P. for State in all Appeals.

Mr.B.G.Tangsali for the Respondent No.1 in F.A.Nos. 123, 126, 127,128,137,138 of 2006.

Mr.Bhatkar for the Respondent No.1 in F.A.No.134/2006.

None for the Respondent No.1 in F.A.Nos.124/2006 and 125/2006.

CORAM: A.S.OKA, J.
DATED: MAY 5,2006.

P.C.:

1. Notice for final disposal of the Appeals was issued in these Appeals. Except in First Appeal Nos.124 and 125 of 2006, the contesting Respondents are represented by Advocates. The Advocate for the Appellant has stated that the Respondent No.1 in First Appeal No.124 and 125 of 2006 are duly served with the notice and Affidavits of service have been filed. The statement is accepted. The facts of the case in each Appeal are more or less identical and hence Appeals can be disposed of by a common Judgment.

2. The challenge in these Appeals is to the Judgments and Awards made under section 18 of the Land Acquisition Act, 1894. The reference Applications filed by the Claimants were earlier decided without impleading the Appellant Konkan Railway Corporation Ltd. as a party. Therefore, the Judgments and Awards were set aside by this Court and order of remand was passed directing the Reference Court to hear and decide the references afresh after giving an opportunity to the parties to lead evidence. After passing the order of remand, the Advocate for the Appellant-Corporation cross examined the claimants. The arguments were heard. At the time of arguments written submissions were filed on behalf of the Appellants. Thereafter, impugned Judgment and Award has

been passed.

3. The learned Advocate for the Appellant submitted no reasons are recorded by the learned Trial Judge while deciding the references afresh after the order of remand. She submitted that the learned Judge was expected to consider the merits of the case and give reasons for fixing the market rate of the acquired lands. She submitted that However, the learned Judge without assigning any reason appears to have relied upon the Judgments delivered by him earlier which were set aside by this Court.

4. Shri Tangsali and Shri Bhatkar appearing for the Claimants pointed out that after the remand, no evidence was adduced by the Appellants and therefore, the learned Judge has confirmed the findings which were recorded prior to remand and it was not necessary to assign any reasons. Shri Bhatkar appearing for some of the Claimants pointed out that the learned Trial Judge has committed an error by not granting interest in terms of section 28 of the Land Acquisition Act, 1894 (hereinafter referred to as the said Act). The learned Advocate for the Claimants submitted that if this Court is inclined to remand the matter again, the remand may be in terms of the Judgment and Order dated 1st March 2006 passed in First Appeal No.1003 of 2003.

5. I have considered the submissions. It is a well settled position of law that the Claimant in a reference under section 18 of the said Act is in position of a Plaintiff. The burden to establish the inadequacy of the market value offered by the Special Land Acquisition Officer is on the Appellant. The Reference Court is expected to appreciate the oral and documentary evidence and to decide the issue as to what was the market value of the acquired land on the relevant date. It is true that the said exercise was done prior to passing the order of remand. The order of remand was passed in view of the mandate of law laid down by the Apex Court regarding giving an opportunity to the acquiring body to contest the reference application. After the order of remand, the Appellant cross examined the Claimants. The Appellant also made oral submissions and filed written submissions. The earlier Judgments delivered by the Reference Court were specifically set aside by this Court and what was expected of the Reference Court was to consider the entire evidence on record afresh and to record appropriate findings as regards correct market value of the property. I find that in the impugned Judgments there is no discussion whatsoever about the merits of the evidence led by the Claimants. There is no discussion regarding the submissions made by the Advocates for the parties. Paragraphs 7 and 8 of the Judgment read thus :

"(7) As nothing was brought on record, as new by the claimant, nor he carried out any amendment in the reference regarding the further enhancement of the compensation and as KRCL failed to adduce any oral evidence before this Court by which this court can be considered that the compensation awarded by my brother Judge, is admissible. In my view, I think that the Judgment and Award passed by my brother Judge must stand as it is.

(8) The Hon'ble High Court justifiedly remanded the matter to look again afresh. Because when the Judgment was delivered and the Award was passed, KRCL was not the party. After remand, this court has given an opportunity to KRCL. The KRCL appeared, filed their say and take the cross examination of the claimant. But at the same time KRCL failed to adduce any oral evidence on record by which this Court can come to the conclusion that the Award passed behind back of KRCL is not correct. As nothing new was brought on record, after remand, I do not think that the Award passed by this Court in absence of KRCL is wrong. Therefore, I answered the issues accordingly and proceed to pass the following order :

6. The only reason given is that the earlier Judgment stands as it is as the Appellant has not led any evidence. The learned Judge could not have relied upon the earlier Judgment which was specifically set aside by this Court. After the order of remand, the Appellant cross examined the Claimants. Oral and written submissions were made on behalf of the Appellant. The learned Judge was under an obligation to consider the evidence and to record proper findings. As the position stands today, the Reference Court has not recorded any independent findings. Therefore, the Advocates for the Appellant rightly submitted that the matter may be sent back so that the learned Judge can deliver proper Judgment.

7. There is merit in the submissions made by the Advocate for the Claimants that the benefit under section 28 of the said Act is not given. In my view, the course adopted by this Court in First Appeal No.1003 of 2003 will have to be adopted. However, it is not necessary to give an opportunity to the parties to lead further evidence.

8. Hence, I pass the following order :

. The impugned Judgments and Awards are set aside. The Reference Applications under section 18 of the said Act are restored. The parties are directed to appear before the learned Trial Judge on 17th July 2006 at 11.00 a.m. The

Reference Court will hear the oral submissions of the Advocates for the parties and will decide the reference afresh in the light of the observations made by this Court in this Judgement.

9. There is no dispute between the parties that the Appellant has deposited 50% of the amount awarded by the Reference Court under the impugned Judgments and Awards. In case the amount is not deposited, the Appellant will deposit 50% of the amount within six weeks from today. On deposit of such amount the learned Judge will release 50% out of the said amount in favour of the Claimants without any security and after the Claimants furnish the solvent surety in respect of the rest of the amount, the same will also be released in favour of the Claimants. No order as to costs.

10. The Reference Court is expected to decide the matter as expeditiously as possible and in any event by end of November 2006.

11. The Appeals are partly allowed in above terms with no order as to costs.

12. Parties and the concerned Court to act upon an authenticated copy of this Judgment. Writ to be sent forthwith.

Judge.